

The background is a dark blue gradient with a subtle pattern of small white dots. On the left side, there are several overlapping circular elements. A prominent one is a large, semi-transparent scale with tick marks and numbers ranging from 140 to 260. Other circles include dashed lines, solid lines, and arrows, suggesting a technical or scientific theme.

COVID-19: UPDATE FOR EMPLOYERS

DISCLAIMER

- This is strictly for informational purposes. The information is intended to be used solely by the subscribers to the Webinar.
- Any answered questions are for hypothetical purposes only. There is no attorney-client privilege information or specific advice.
- If you have specific questions and are a part of Foley & Foley's On-Call Triage Service, then please feel free to reach out to me at wendy@foleylawpractice.com.

PHASE 3 REOPENING IN MASSACHUSETTS

- More businesses are able to reopen:
 - Gyms and health clubs
 - Indoor and outdoor events
 - Indoor recreation
 - Museums and historical facilities
 - Theaters and performance venues
- The guidelines are still the same:
 - Social Distance
 - Clean and Disinfect
 - Train Employees
 - Hygiene Protocols

PHASE 3 REOPENING IN MASSACHUSETTS

- Indoor and Outdoor Events
 - Only indoor and outdoor event spaces, ballrooms, private party rooms, and public spaces like parks
- Indoor Recreation
 - 40% of the building's maximum permitted occupancy per the permit on record (no capacity stated then 8 people including staff per 1000 sq. feet)
 - Must have physical partitions to separate workstations that cannot be spaced out.

STILL THE SAME RESTRICTIONS FOR BUSINESSES

- All employers need to write a COVID-19 Control Plan.
 - Social Distancing: all customers and employees stay 6ft apart, create protocols so employees can practice social distancing, post signs about social distancing, require face coverings for all employees and customers. 50% capacity for enclosed spaces.
 - Hygiene Protocols: provide handwashing capabilities, enforce frequent handwashing, sanitize high touch areas frequently.
 - Staffing and Operations: training employees in hygiene and social distancing, screen employees so that those who show symptoms do not come to work, create a plan for when an employee tests positive and a return to work.
 - Cleaning and Disinfecting: establish and maintain protocols for cleaning, disinfect the area of a positive COVID-19 employee, clean all common surfaces a frequent intervals.
 - <https://www.mass.gov/doc/covid-19-reopening-control-plan-template/download>

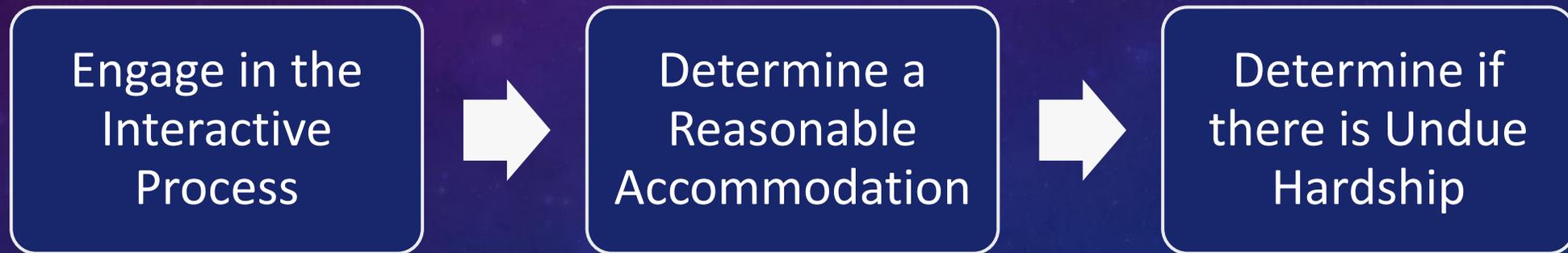
MASSACHUSETTS PHASE 3 – OFFICE SPACES

- Offices have a limit of 50% maximum occupancy level/typical occupancy of the business.
- Must be separated by 6ft.
- Close or reconfigure common areas or where workers generally congregate.
- For work stations that cannot be spaced out there need to be physical partitions.
- Provide training to staff on safety precautions.
- <https://www.mass.gov/info-details/safety-standards-and-checklist-office-spaces>

TRAVEL OUT OF STATE

- Moved from “encouraged” to “instructed” which means employees who travel out of state MUST self-quarantine for 14 days before returning to work. The employee can return sooner if they show a negative test.
- Exceptions:
 - Travel to Maine, New Hampshire, Vermont, Rhode Island, Connecticut, New York, and New Jersey.
 - Federally determined essential workers per this order:
[https://www.cisa.gov/sites/default/files/publications/Version 3.1 CISA Guidance on Essential Critical Infrastructure Workers 0.pdf](https://www.cisa.gov/sites/default/files/publications/Version%203.1%20CISA%20Guidance%20on%20Essential%20Critical%20Infrastructure%20Workers%200.pdf)
 - <https://www.mass.gov/info-details/travel-information-related-to-covid-19>

WHAT HAPPENS IF AN EMPLOYEE IS AT RISK?



INTERACTIVE PROCESS



- When the disability is readily apparent or you have been made aware of a disability, you would begin documenting the disability and suggested accommodation from the healthcare provider.
- Inquiries must be **JOB RELATED** and consistent with **BUSINESS NECESSITY**.
 - This is not a fishing expedition into the employee's personal medical issues.

INTERACTIVE PROCESS

- Talk to the employee, document your conversations.
- Obtain permission from the employee to speak to their healthcare provider.
- Provide a job description to the healthcare provider and explicitly ask about limitations of the disability.
- Determine the essential functions of the job.
- Have the healthcare provider articulate reasonable accommodations given the limitations.

What is an “essential function?”

- The reason the job exists is to perform that function. For example, an essential function of a pilot is to fly planes.
- Only a few employees can perform the function.
- The function is so highly specialized that the employer hires people into the position specifically because of their expertise in performing that function.

INTERACTIVE PROCESS RELATED TO COVID-19

- Determine the underlying condition that makes the employee “at risk.”
- Ensure you get clear direction from the healthcare provider as to what they recommend in limiting exposure to COVID-19.



REASONABLE ACCOMMODATIONS

Job restructuring or temporary reassignment;

Modifying schedules;

Allowing leave from work;

Providing assistive services to make worksites and workstations accessible;
and

Modifying policies.

REASONABLE ACCOMMODATIONS RELATED TO COVID-19

Teleworking

Increased space and social distancing

Physical barriers between the employee and other people (reception desks, barriers to standing height at cubicle)

Unpaid leave of absence

Requiring additional or enhanced protective equipment (gloves, masks, gowns, face shields, respirators)

Additional cleaning and disinfection

Moving the location of where one performs work (moving to a different office/increased social distance)

Elimination of marginal functions (incidental job duties)

Alternate method of screening

UNDUE HARDSHIP

- The reasonable accommodation would cause significant difficulty or expense.
 - Requires a case-by-case assessment
 - Significant difficulty or expense to the organization as a whole
 - Factors considered include:
 - the nature and cost of the accommodation needed
 - the overall financial and operational resources of the company and the location/facility
 - the impact of the accommodation on operations



UNDUE HARDSHIP RELATED TO COVID-19



- Consider the essential functions of the job and the overall resources available to the company.
- Leave as an accommodation will likely cause undue hardship since COVID-19 is not “ending” soon.
- Financial resources available during COVID-19 is another consideration, e.g., potential revenue, reduction in force.

WHAT THE COVID-19 REASONABLE ACCOMMODATION TOOLKIT PROVIDES:

- Letter to the employee beginning the interactive process;
- Informed Consent Letter to talk with the Healthcare Provider directly;
- A Reasonable Accommodation Checklist for the Healthcare Provider;
- Potential Reasonable Accommodations for COVID-19;
- An Undue Hardship analysis document;
- Training video and slides on the ADA Process
- And other COVID-19 Resource Documents.

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FFCRA COMPLIANCE

- Emergency Paid Sick Leave:
 - If the employee is experiencing symptoms and is seeking a diagnosis, they are entitled to leave until they receive the test results.
 - Minimal documentation can be requested.
 - School OR place of care – this can include day cares, summer camps, or summer school.
 - When the employee exhausts this leave then step into the ADA or FMLA inquiry.

FFCRA COMPLIANCE

- Emergency Family and Medical Leave
 - Once exhausted, there is no other job protected leave for child care
 - Watch for legislation and/or new guidance from the DOL for the upcoming school year:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

UPDATES TO THE PPP LOAN:

- Can be 8 weeks or extend to 24 weeks. If you were included in the first wave of borrowers you can select the extension. Talk to your lender.
- Changed from 75% on payroll to 60%, however it is now a “cliff” so if 60% is not spent on payroll, none of the loan is forgiven.
- Changed the deadline to restore workers from June 30th to December 31st.
- Still can receive forgiveness if you 1) offered the job in good faith and the employee rejected or 2) could not fill the position due to COVID-19 related restrictions.
- 5 years to repay (instead of the original 2).
- Employers can defer their share of FICA payroll taxes for two years.

BIO – WENDY HANSEN

- After graduating law school on a merit scholarship, Wendy Hansen organized and created a legal compliance program for a large manufacturer in Massachusetts. Starting from the ground up, Wendy taught legal compliance and leadership training; implemented and produced policies from employee records to employee reviews; drafted and implemented a framework for a new Human Resources department for the company; and conferred with upper management regularly on HR and general business problems. This experience gives Wendy an insider's perspective on the day to day challenges HR and management face.
- As well as her strong human resources background, Wendy worked at an insurance defense litigation firm in Boston. She reviewed and analyzed employment law agency charges, demand letters, and litigation. Wendy worked with employers under their employment practice liability insurance on a variety of claims, including harassment, discrimination, retaliation and wrongful termination.
- Wendy graduated from New England School of Law, cum laude and received the Outstanding Scholastic Achievement Award. She was a Comment and Note Editor for New England Law Review, where her case comment, *Morrow v. Balaski: When Good Intentions Go Bad*, was published. She was a Mock Trial Regional Finalist her second year.
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Q&A

The background is a deep blue gradient with a subtle pattern of white stars and dots. Overlaid on this are several technical diagrams in a lighter blue color. In the top right, there is a large circular gauge with a scale from 0 to 210 and a needle pointing towards 180. Below it is another circular diagram with concentric rings and arrows. In the bottom right, there is a diagram with dashed lines and arrows forming a circular path. In the bottom left, there is a diagram with solid lines and arrows forming a circular path. In the top left, there is a small circular diagram with a single arrow.